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HOUSING SESSION
AT NEW HAVEN

NH-986

DOCKET NO. NHH-CV-22-5005353-S	: SUPERIOR COURT
JUANA VALLE	: HOUSING SESSION
v.	: AT NEW HAVEN
CITY OF NEW HAVEN	: NOVEMBER 4, 2022
FAIR RENT COMMISSION	

MEMORANDUM OF DECISION ON DEFENDANT'S MOTION TO DISMISS

The plaintiff, **JUANA VALLE**, has filed this appeal from a decision of the defendant, **THE CITY OF NEW HAVEN FAIR RENT COMMISSION**. The Commission dismissed her complaint to it as the underlying summary process action she complained of was scheduled for trial, and, therefore, the Commission found it was unable to provide any relief to the plaintiff.

The Commission is now moving to dismiss this appeal as moot. The Commission notes that since it dismissed the complaint pending trial, the underlying eviction case was withdrawn (See Silverio Lucero, LLC v. Jiminez, NHH-CV-21-6014347-S, withdrawn July 15, 2022). The plaintiff objects to a dismissal of this appeal, claiming that the Commission had additional powers to prevent her landlord from filing a new summary process action for six months, so there was relief she could have received from the Commission and she believes that a dismissal based on a pending trial was improper. She also advises that her landlord has, in fact, brought another summary process case so her claims are capable of repetition after a withdrawal of the initial action. Further, she claims she is a surrogate for similarly situated tenants.



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"[J]usticiability comprises several related doctrines, namely, standing, ripeness,

mootness and the political question doctrine, that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter."

Connecticut Coalition for Justice in Education Funding v. Rell, 295 Conn. 240, 254 (2010).

STANDING

"Standing is the legal right to set judicial machinery in motion." Blumenthal v. Barnes, 261 Conn. 434, 441 (2002). There are three types of standing; statutory aggrievement, classical aggrievement and taxpayer standing. See, generally, Andross v. Town of West Hartford, 285 Conn. 309, 322-24 (2008).

Statutory aggrievement arises from legislation that grants standing to those who claim injury to an interest protected by that legislation. RMS Residential Properties, LLC v. Miller, 303 Conn. 224, 229-30 (2011). Statutory aggrievement may also be found under the "zone of interests" test. "Essentially the standing question in such cases is whether the statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief. The plaintiff must be within the zone of interests protected by the statute. . . . The defendant must also have violated some duty owed to the plaintiff." (Emphasis in original.) Albuquerque v. State Employees Retirement Comm., 124 Conn. App. 866, 874 (2010) (re: Connecticut General Statute § 7-439g); see also Burton v. Dominion Nuclear Connecticut Inc., 300 Conn. 542, 556-61 (2011) (re: Connecticut General Statute § 22a-16); Abel v. Planning & Zoning Commission, 297 Conn. 414, 422-36 (2010) (re: Connecticut General Statute § 8-8).



Classical aggrievement requires a two-part showing; 1) a specific, personal and

legal interest in the challenged action, as distinguished from a general interest, such as is the concern of all members of the community as a whole, and 2) that this specific personal and legal interest has been specially and injuriously affected by the challenged action. See Wellswood Columbia, LLC v. Hebron, 295 Conn. 802, 810 (2010); see also Ganim v. Smith & Wesson Corp., 258 Conn. 313, 344-65 (2001) (injury must be direct, not indirect, remote or derivative).

On rare occasions, Courts have permitted litigants to establish standing by proving classical aggrievement in a representative capacity based on alleged violations of others' rights. However, Courts have never expanded the scope of classical aggrievement in an individual capacity to eliminate the requirement that the litigant be personally aggrieved by the alleged violation. State v. Bradley, 195 Conn. App. 36, 50 (2019). The Bradley Court noted that "although a party has only individual standing to challenge alleged violations of his own constitutional rights, such challenges are not necessarily limited to ongoing violations of those rights, but may be directed to future violations of such rights that are reasonably likely to occur." at 47

Taxpayer standing was not raised or discussed by the parties herein and does not appear relevant to this case.

Ms. Valle has a specific, personal, and legal interest in this matter and has been injured by the Commission's dismissal of her complaint. She is also in the zone of interest of citizens intended to be protected by the formation of Fair Rent Commissions. The importance of fair rent protections having recently been acknowledged and expanded by the legislature (See Connecticut Public Act 22-30, signed into law May 17, 2022 and effective October 1, 2022).



Because the plaintiff has standing individually, the Court need not address whether she has standing as a surrogate for other tenants.

MOOTNESS

Although she may have standing, the controversy also must also be an appropriate forum to actually make a difference and provide practical relief to the claimant. Mootness “implicates subject matter jurisdiction, which imposes a duty on the court to dismiss a case if the court can no longer grant practical relief to the parties.” Curley v. Kaiser, 112 Conn. App. 213, 229 (2009).

On the surface, it would appear that this case may be moot now because even if the eviction was not withdrawn at the time the Commission dismissed the complaint, it is now withdrawn. But the Court has to consider the most well-known exception to the mootness doctrine – when an issue is capable of repetition, yet evading review; Loisel v. Rowe, 233 Conn. 370, 378-88 (1995); and/or when there is a reasonable possibility that prejudicial collateral consequences will occur. Putman v. Kennedy, 279 Conn. 162, 169-75 (2006) (collateral legal disabilities of domestic violence restraining orders); Williams v. Ragaglia, 261 Conn. 219, 226-36 (2002) (revocation of foster care license has collateral consequences). Boisvert v. Gavis, 332 Conn. 115 (2019) (a prohibited action ended voluntarily, but is capable of being resumed).

“Our cases reveal that for an otherwise moot question to qualify for review under the ‘capable of repetition, yet evading review’ exception, it must meet three requirements. First, the challenged action, or the effect of the challenged action, by its very nature must be of a limited duration so that there is a strong likelihood that the substantial majority of cases raising a question about its



validity will become moot before appellate litigation can be concluded. Second, there must be a reasonable likelihood that the question presented in the pending case will arise again in the future, and that it will affect either the same complaining party or a reasonably identifiable group for whom that party can be said to act as surrogate. Third, the question must have some public importance. Unless all three requirements are met, the appeal must be dismissed as moot.” Loisel v. Rowe, 233 Conn. 370, 382–83 (1995)

All summary process cases are, by definition, “summary,” meant to have a limited duration of time and provide a quicker path to resolution rather than other civil matters. With summary process proceedings, however, much is at stake and a tenant can be removed from his or her home in a matter of weeks, which is why, to counterbalance the speedy process, the legislature established procedural safeguards to protect tenant’s rights - and protections from retaliatory evictions are among those safeguards. Not only can the claim of a retaliatory eviction be addressed as a special defense to the eviction (Connecticut General Statute §47a-20) but Fair Rent Commissions have independent jurisdiction to consider complaints regarding alleged retaliation. (Connecticut General Statute §7-148d).

Despite their summary nature, many such cases obtain appellate review and are not, therefore, *de facto* incapable of review. The issue here is that under Connecticut General Statute §7-148b through 7-148f, the Commission is empowered by the legislature to, *inter alia*, review complaints from citizens regarding allegations of retaliatory evictions and, in the event of a finding of a retaliatory eviction, may “order the landlord to cease and desist from such conduct,” Connecticut General Statute §7-148d(b). Additionally, while the Commission certainly cannot preempt the jurisdiction of this Court to hear a



case or even stay a matter pending in this Court (see, generally, Mrosek v. MacPherson, J.D. of Hartford at New Britain Housing Session Docket #SPH89843, 19 Conn.L.Rptr. 524 (April 7, 1997, J. Beach), it can fine a landlord within its jurisdiction for engaging in activity that the Commission finds is retaliatory. See Connecticut General Statute §7-148f. The fact that an action is withdrawn, or perhaps even already resolved (or scheduled for a trial), is of no matter to the Commission’s statutory authority to consider citizen complaints of retaliatory eviction and provide a remedy within its jurisdiction, if appropriate.

Regarding the second prong of the exception, “the analysis ‘entails two separate inquiries: (1) whether the question presented will recur at all; and (2) whether the interests of the people likely to be affected by the question presented are adequately represented in the current litigation. A requirement of the likelihood that a question will recur is an integral component of the ‘capable of repetition, yet evading review’ doctrine. In the absence of the possibility of such repetition, there would be no justification for reaching the issue, as a decision would neither provide relief in the present case nor prospectively resolve cases anticipated in the future. . . . The second prong ‘does not provide an exception to the mootness doctrine when it is merely possible that a question could recur, but rather there must be a reasonable likelihood that the question presented in the pending case will arise again in the future’ (internal quotation marks and citations omitted.) J. Y. v. M. R., 215 Conn. App. 648, 662–63 (2022).

It appears clear to this Court that this exact issue is reasonably likely to occur on an ongoing basis. Many of the cases brought before this Court are no-fault evictions. While the Court believes the plaintiff’s statement that by dismissing this appeal “landlords will have a clear road map – to file retaliatory evictions to punish tenants for filing fair rent cases and ruin the fair rent system which



exists in New Haven and which the state legislature seeks to extend across the state” is overly broad and a misrepresentation of the overwhelming majority of landlords who act appropriately and do not abuse the system, the exact scenario that occurred in this case (a second eviction action was brought right after the dismissal of the first) is a frequent fact pattern in Housing Court. It is more than a possibility that this scenario like this could occur, it is reasonably likely with parties engaged in a contentious housing relationship, such a situation will occur again, if not to Ms. Valle then to others similarly situated.

This issue is also one of public importance as Fair Rent Commissions being actively involved on behalf of landlords and tenants is oftentimes the only means to resolve many important local housing issues. The importance of such Commissions in resolving disputes is a high priority issue to the legislature as well, which proactively expanded the availability of Commissions across the state.

By all measures, this case falls within the exception to the mootness doctrine.

CONCLUSION

It is significant to note that this decision is solely on the defendant’s motion to dismiss on a mootness basis. Although the Court is denying the motion finding that the plaintiff has standing for this appeal to be adjudicated and the issue is not moot, the Court is not presently reviewing the actual underlying appeal issue. The Court notes that the complaint to the Commission was filed May 16, 2022 - 8 months after the service of the notice to quit in the complained of eviction filing – and was filed after this Court denied two motions to dismiss by the plaintiff herein. The Commission acted swiftly and calendared the complaint



for a hearing within days. It is not entirely obvious that the underlying complaint would have resulted in a successful adjudication for the plaintiff, but as to this appeal of the Commission's decision, it is inappropriate to dismiss it procedurally as moot. The Court will further review the underlying dismissal in the normal course of its reviewing the pleadings in this matter.

The motion to dismiss is denied as the subsequent filing of a withdrawal of the subject summary process action did not make the appeal moot.

BY THE COURT,



Walter M. Spader, Jr., Judge

Notice of Decision sent to COLP and:

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by /s/ William Pitt, Chief Clerk, New Haven Housing Session



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